

1 HONORABLE RICHARD A. JONES  
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UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

9 JERARDO RODRIGUEZ,  
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11 Plaintiff,

12 v.  
13 SOHI HEMIT, SOON KIM, ALL  
14 UNKNOWN INVESTIGATORS FOR THE  
POST OFFICE, ALL UNKNOWN  
15 INVESTIGATORS FOR THE  
INSPECTOR GENERAL, ALL  
16 UNKNOWN INVESTIGATORS FOR THE  
CONSUMER AFFAIRS,

NO. C16-0778 RAJ  
ORDER

18 Defendants.  
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20 **I. INTRODUCTION**

21 This matter comes before the Court upon Defendants' motion to dismiss (Dkt. # 26)  
22 and Plaintiff's motion for reconsideration, extension of time and to compel (Dkt. # 30).

23 **II. BACKGROUND**

24 This lawsuit arises from Plaintiff's encounters with his mail carrier. Plaintiff claims  
25 that he complained to the U.S. Post Office in July 2015 about the bad attitude of Sohi Hemit,  
26 Plaintiff's mail carrier. Dkt. 1-1 (Complaint) at 1. Plaintiff avers that Hemit began throwing  
27 trash in Plaintiff's mailbox in retaliation for this complaint. *Id.* Plaintiff alleges that he  
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1 appealed to Soon Kim, the Post Master General, as well as to Kim's superiors to no avail.  
2 *Id.* at 2. Plaintiff claims that he experienced further retaliation for his insistence on an  
3 investigation into the initial complaint. *Id.* For example, Plaintiff states that Hemit tampered  
4 with his mail on one occasion and, on another occasion, stole \$60.00 by slicing open three  
5 letters meant for Plaintiff. *Id.* Plaintiff claims that the harassment has not stopped. *Id.*

On May 25, 2016, Plaintiff filed suit against Hemit, Kim, and a slew of unknown defendants. Dkt. # 1. In order to properly serve the unknown defendants, Plaintiff requested permission to propound early discovery. Dkt. # 22. The Court granted his request, allowing Plaintiff to propound discovery no later than January 31, 2017. Dkt. # 23. On January 17, 2017, Plaintiff filed a motion to compel, arguing that he propounded discovery but Defendants refused to comply. Dkt. # 24. Instead, Defendants answered that Plaintiff's motion for discovery was "improper and objectionable under" the Federal Rules of Civil Procedure. Dkt. # 24 at 8. Defendants stated they had "no obligation to provide responses to these discovery requests, and no further response, other than [this letter,] will be forthcoming." *Id.* The Court struck part of Plaintiff's motion to compel for failure to comply with LCR 37(a)(1) but reiterated that "Defendants shall respond to Plaintiff's discovery no later than 30 days after receipt." Dkt. # 25.

18 The parties did not file additional briefs regarding discovery. On March 23, 2017, the  
19 Court noted that the deadlines for early discovery had passed and therefore dismissed the  
20 unknown defendants. Dkt. # 29.

Defendants now request that the Court dismiss the matter pursuant to Rule 4(m). Dkt. # 26. Plaintiff moves to compel Defendants to respond to his discovery requests. Dkt. # 30.

### III. DISCUSSION

#### A. Service

25 In a suit against a federal employee in her official capacity, Rule 4(i)(3) requires a  
26 plaintiff to serve both the employee and the United States. Fed. R. Civ. P. 4(i)(3). Rule  
27 4(i)(1) instructs plaintiffs on how to serve the United States.

1 Plaintiff's *pro se* status does not excuse him from abiding by applicable rules and  
2 deadlines. However, in the context of Rule 4—and specifically in the context of Rule 4(i)—  
3 the Ninth Circuit has recognized "a liberal and flexible construction." *Borzeka v. Heckler*,  
4 739 F.2d 444, 447 (9th Cir. 1984). Moreover, Rule 4 provides some leeway to a plaintiff  
5 who successfully serves the employee but not the United States. In such a case, the "court  
6 must allow a party a reasonable time to cure its failure." Fed. R. Civ. P. 4(i)(4)(B).

7 In this case, Plaintiff served the named defendants but failed to serve the United  
8 States. In response, Plaintiff contends that the United States is on notice because the  
9 Department of Justice responded to his application for default and has authored many of the  
10 briefs in this matter. Dkt. ## 17, 26. In the alternative, Plaintiff requests assistance from the  
11 Court in properly serving the United States. Dkt. # 28.

12 The Court will allow Plaintiff reasonable time to cure the issue with service in this  
13 matter. *See* Fed. R. Civ. P. 4(i)(4)(B). The Court directs the Clerk to issue service upon the  
14 United States. 28 U.S.C. § 1915(d). The Clerk is directed to send by first-class mail to the  
15 United States attorney for the Western District of Washington the following documents: a  
16 copy of Plaintiff's complaint and this Order, a Waiver of Service of Summons, and a return  
17 envelope, postage prepaid, addressed to the Clerk's office. The Clerk is further directed to  
18 send these same documents, by registered or certified mail, to the Attorney General of the  
19 United States. Fed. R. Civ. P. 4(i)(B).

20 **B. Early Discovery**

21 On two occasions, the Court granted Plaintiff early discovery to ascertain the names  
22 of the "unknown" defendants. Dkt. ## 23, 25. The Court dismissed the unknown defendants  
23 after it appeared that Plaintiff did not timely amend his complaint. Dkt. # 29. However, it  
24 appears that the Government did not comply with the discovery requests. Dkt. # 24.

25 The Court GRANTS Plaintiff's motion for reconsideration to the extent that he may  
26 have an extension to serve the unknown defendants. The Court reiterates what it has already  
27 ordered in the past: Plaintiff may propound limited and targeted early discovery upon  
28 Defendants for the sole purpose of ascertaining the identities of the unknown defendants. To

1 be clear, the scope of discovery is limited to the type of request that appears in Question 3 of  
2 Plaintiff's Motion to Compel. Dkt. # 24 at 3. Such discovery must be propounded no later  
3 than August 11, 2017. Defendants shall respond to Plaintiff's discovery no later than thirty  
4 (30) days after receipt of the same. If Defendants object to the discovery requests, they shall  
5 provide Plaintiff with the reasons for the objections. Defendants are on notice that Plaintiff's  
6 discovery is targeted at identifying certain unknown defendants and shall keep this purpose  
7 in mind when submitting their response.

8 No later than ten (10) days after Plaintiff has received the discovery responses from  
9 Defendants, Plaintiff shall file an Amended Complaint naming those defendants whose  
10 identities were ascertained through early discovery. If no such Amended Complaint is filed  
11 by September 22, 2017, the Court will dismiss these unknown defendants without further  
12 notice to the parties.

13 **IV. CONCLUSION**

14 For the foregoing reasons, Defendants' motion to dismiss is **DENIED**. Dkt. # 26.  
15 Plaintiff's motion is **GRANTED**. Dkt. # 30.

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17 Dated this 1st day of August, 2017.

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The Honorable Richard A. Jones  
United States District Judge